APPENDIX A

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IN THE DISTRICT COURT OF THE THIRD
JUDICIAL DISTRICT IN AND FOR
THE COUNTY OF SALT LAKE, STATE OF UTAH

STATE TAX COMMISSION OF UTAH,
Plaintiff,

- v -

THOMAS WARNER HOOPES,
Defendant.

ORDER No. 93-675

The defendant's Motion to Set Aside the Court's previous Order and Supplemental Order having been called up for hearing before the above-entitled Court on the 13th day of December at the hour of 2:00 o'clock, p.m., and the Utah State Tax Commission having been represented by Mr. Bruce M. Hale, Assistant Attorney General, and the defendant, Mr. Thomas Warner Hoopes being present, and the matter being fully argued, and the Court having read the Memorandums on file, and being fully apprised in the premises, now enters the following Order:

1. That the defendant's Motion to Set Aside Order is denied.

2. That the defendant is ordered to comply with the prior Order of this Court entered on the 15th day of November, 1972, within 10 days in its entirety, or, in the alternative, to pay the judgment herein docketed in full, or to file an appeal to the Supreme Court of the State of Utah within 10 days and file a Supersedeas Bond.

DATED this 15th day of December, 1972.

G. HAL TAYLOR
District Judge

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing Order to Mr. Thomas W. Hoopes, 2559 Keddington Lane, Salt Lake City, Utah, this 15th day of December, 1972, postage prepaid.

BRUCE M. HALE

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF UTAH

State Tax Commission of Utah,
Plaintiff and Respondent,

v.

Thomas Warner Hoopes,
Defendant and Appellant.

Nos. 13181 and 13173

FILED
August 21, 1973

L. M. Cummings,
Clerk

ELLETT, Justice:

The defendant appeals from an order of contempt made by the district court in a supplemental proceeding wherein the State Tax Commission was attempting to secure some information regarding the assets belonging to the defendant.

The conduct of the defendant was clearly contumaceous, and he does not contend to the contrary. His defense is based upon the proposition that the state income tax law is unconstitutional.

The defendant made a tax return containing no information. He struck the wording about its being made under the penalty of perjury, signed it, and returned it to the plaintiff. Subsequently, pursuant to law,[1] the plaintiff determined the amount of tax due and mailed a notice of deficiency to the defendant and thereafter a demand for payment. The defendant made no request for a redetermination of the

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[1] Sec. 59-14-58, U.C.A. 1953.

tax[2] and no appeal to this court.[3] He did not pay the tax assessed, and the plaintiff issued a warrant for delinquent taxes, including penalties and interest, in the amount of $2,258.02. Based thereon, the order in supplemental proceedings above referred to was obtained in the district court.

Despite the Eleventh Amendment to the Federal Constitution as interpreted by the case of Hans v. Louisiana,[4] Mr. Hoopes brought suit in the federal district court wherein he sued the State of Utah through its State Tax Commission[5] to have that court determine that our statute and the procedures oulined therein are unconstitutional. Aside from the question of the jurisdiction of the federal court, the ruling made by the judge there was correct,[6] viz.:

> Petitioner's central claim appears to be that no administrative agency has the power to levy upon and cause a sale of the petitioner's property for the payment of delinquent taxes even though the machinery of the court is invoked to effect the sale and adequate notice, right to hearing and prior and subsequent judicial review are assured (as they appear to be by Utah law; e.g., Utah Code Annotated, Section 59-14-29, 59-14-39 to 42), . . . the power of administrative agencies under such circumstances has long been established.

Our statute[7] provides that the warrant issued by the Tax Commission may be filed with the clerk of the district court and shall have the force and effect of a judgment rendered in said court.

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[2] Sec. 59-14-29, U.C.A. 1953.

[3] Sec. 59-14-40, U.C.A. 1953.

[4] 134 U.S. 1 (1889).

[5] Hoopes v. State Tax Commission, Civil No. 369-72.

[6] Coffin Bros. & Co., et al., v. Bennett, 277 U.S. 29 (1928); Phillips v. Com. 283 U.S. 589 (1931).

[7] Sec. 59-14-60, U.C.A. 1953.

The statute does not deny due process to a recalcitrant taxpayer for the reason that such a one has a right to be heard regarding the determination of his tax[8] and a right to have this court review the ruling of the Commission.[9]

Mr. Hoopes refused to avail himself timely of the due process of law afforded by the statute, and the determination of the tax by the Commission became final.[10]

Since the statutes and the procedure outlined therein did not deprive Mr. Hoopes of "Due Process of Law" as he claims, he is not entitled to any relief on this appeal. He must answer the proper questions propounded to him regarding his assets or bear the consequences of his contumacy.

The judgment of contempt rendered in the district court is affirmed. No costs are awarded.

WE CONCUR:

.....
E. R. Callister, Jr., Chief Justice

.....
J. Allan Crockett, Justice

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R. L. Tuckett, Justice

Henriod, Justice, does not participate herein.

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[8] Secs. 59-14-29 to 31, U.C.A. 1953.

[9] Sec. 59-14-40, U.C.A. 1953.

[10] Sec. 59-14-39, U.C.A. 1953.

Cited in 514 P 2nd 221.

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SUPREME COURT OF UTAH

September 21, 1973

Nos. 13181 and 13173

State Tax Commission of Utah,
Plaintiff and Respondent,

v.

Thomas Warner Hoopes,
Defendant and Appellant.

This day petition for rehearing denied; case remitted to Salt Lake County.

L. M. Cummings, Clerk

APPENDIX C

UTAH RULES OF CIVIL PROCEDURE
RULE 69

(k) *Order for Appearance of Judgment Debtor; Arrest.* At any time when execution may issue on a judgment, the court from which an execution might issue shall, upon written motion of the judgment creditor, with or without notice as the court may determine, issue an order requiring the judgment debtor, or if a corporation, an officer thereof, to appear before the court or a master at a specified time and place to answer concerning his or its property. A judgment debtor, or if a corporation, any officer thereof, may be required to attend outside the county in which he resides, but the court may make such order as to mileage and expenses as is just. The order may also restrain the judgment debtor from disposing of any non-exempt property pending the hearing. Upon the hearing such proceedings may be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as on execution against such property.

In aid of an order requiring the attendance of the judgment debtor, the court may, upon satisfactory proof by affidavit or otherwise, that there is danger of the debtor's absconding, order the sheriff to arrest the debtor and bring him before the court, and may order such judgment debtor to enter into an undertaking with sufficient sureties, that he will attend from time to time before the court or master, as may be directed during the pendency of the proceedings and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to jail.